

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

ANTONIO GALLEGOS, KRISTIAN PETTINE,  
ANDRE GALLEGOS, and K.L.P.L., a  
minor child,

Plaintiffs,

vs.

No. 1:12-CV-224-LH/KBM

CITY OF ESPAÑOLA, a municipal corporation,  
JOE MARTINEZ, individually and in his official capacity;  
JEREMY APODACA, individually and in his official  
capacity; ROBERT VIGIL, individually and in his official  
capacity; CITY OF ESPAÑOLA OFFICERS and SUPERVISORS JOHN  
DOES 1 through 10, individually and in their official  
capacities,

Defendants.

DEPOSITION OF ROBERT VIGIL

Monday, June 17, 2013  
9:25 A.M.

Cumbre Court Reporting, Inc.  
2019 Galisteo Street  
Santa Fe, New Mexico 87505

PURSUANT TO THE NEW MEXICO RULES OF CIVIL  
PROCEDURE, this Deposition was:

TAKEN BY: NATHANIEL V. THOMPSON  
ATTORNEY FOR THE PLAINTIFFS

REPORTED BY: ALLISON ASH-HOYMAN  
NEW MEXICO CCR #18  
CUMBRE COURT REPORTING, INC.  
2019 Galisteo, Suite A-1  
Santa Fe, New Mexico 87505

Allison Ash-Hoyman, CCR 18

Exhibit K

1 Q. Okay. And who was present when you arrived  
2 with Officer Apodaca?  
3 A. I believe Ms. Kristian Pettine was there,  
4 Antonio Gallegos was there, and a little child, I want  
5 to say two years old or younger.  
6 Q. Okay. Anybody else?  
7 A. There were other individuals in the home but I  
8 don't recall their names.  
9 Q. Okay. Now, when you say "there were other  
10 individuals in the home," Kristian, Antonio and the baby  
11 were outside?  
12 A. Yes.  
13 Q. In relation to the home, where outside were  
14 they?  
15 A. Antonio Gallegos was -- Officer Apodaca's car  
16 was parked in front of the front door of the home, not  
17 all the way to the door, but was parked a little ways  
18 back. Antonio Gallegos was on the right side of the  
19 vehicle, I believe by the rear, the rear tire. If I'm  
20 correct.  
21 Q. Okay. And where was Kristian Pettine, do you  
22 recall?  
23 A. I don't recall.  
24 Q. And how about the baby?  
25 A. The baby was walking around, I remember. She

1 was walking around in an obviously soiled diaper without  
2 a shirt, without any shoes, without any pants on,  
3 walking around on hot gravel.  
4 Q. Okay. At the moment that you observe Antonio  
5 Gallegos by the back of the car, Ms. Pettine somewhere  
6 outside the house, and the baby walking around, did you  
7 have reason to believe that any of them had committed a  
8 crime or was involved in committing a crime?  
9 MR. BASHAM: Objection as to form.  
10 A. When I arrived and I spoke to Officer Apodaca,  
11 I wasn't exactly sure who had the weapon.  
12 BY MR. THOMPkins:  
13 Q. Okay.  
14 A. So I didn't know at that time if somebody had  
15 committed a crime or not.  
16 Q. Okay. So you didn't have any facts or  
17 information that indicated that Antonio Gallegos had a  
18 weapon?  
19 A. Well, I -- there was weapons in the home, from  
20 what I was told from Officer Apodaca or -- I'm sorry,  
21 there was a weapon somewhere, we weren't sure where it  
22 was at. We didn't know who pointed the weapon at the  
23 individual.  
24 Q. Well, did you talk to the complainant?  
25 Where was the complainant, by the way, when

1 you arrived?  
2 A. I'm thinking he was outside. If I'm -- it's  
3 been so long. I want to say he was sitting on the rear  
4 of a pickup truck, on the tailgate, but I'm not exactly  
5 sure.  
6 Q. Okay. And did you have any information that  
7 he said Antonio Gallegos was the one who pointed the gun  
8 at him?  
9 A. No.  
10 Q. Did he have -- or did you get any information  
11 from him that Christine Pettine -- Christine -- Kristian  
12 Pettine was the one who pointed the gun at him?  
13 A. No.  
14 Q. Did Officer Apodaca give you any information  
15 that indicated that Antonio Gallegos was the person who  
16 pointed the gun?  
17 A. No.  
18 Q. And did Officer Apodaca give you any  
19 information that indicated that Kristian Pettine was the  
20 one who pointed the gun?  
21 A. No.  
22 Q. And you didn't suspect the baby of pointing  
23 the gun?  
24 A. Obviously not.  
25 Q. So as you are assisting Officer Apodaca, whose

1 questioning -- what questioning is being conducted of  
2 either Mr. Gallegos or Ms. Pettine?  
3 MR. BASHAM: Objection to form.  
4 A. One thing that Officer Apodaca was trying to  
5 find was the weapon, where the weapon was. We weren't  
6 sure where the weapon was. And he was trying to sort  
7 out exactly who pointed the weapon, or pointed the  
8 weapon at the victim.  
9 BY MR. THOMPkins:  
10 Q. Let me -- I may have confused you. I don't  
11 want you to think or tell us what you think Officer  
12 Apodaca was thinking or trying to do.  
13 I want to know if you know what questions  
14 either he was asking of Antonio Gallegos, or anybody  
15 while you were assisting him.  
16 Do you know or recall?  
17 A. Some of the questions -- I don't know verbatim  
18 what the questions were, but some of the questions  
19 referred to where the weapon is at.  
20 Q. Okay. And did any of the people that he was  
21 questioning tell him where -- and the weapon that you  
22 are referring to, is that the one that was pointed at  
23 the complainant?  
24 A. At the time that's the only weapon I knew  
25 should have been around.



1 Q. Okay. And did Officer Apodaca, or did you  
2 hear any of the people that were being questioned  
3 indicate to you where the weapon was that had been  
4 pointed at the complainant?  
5 A. No. What they did, I believe it was Ms.  
6 Pettine that did confirm there was a weapon but didn't  
7 know where it was at.  
8 Q. Okay. Did -- would that -- as a police  
9 officer, if Ms. Pettine had confirmed, like you said,  
10 there was a weapon someplace, would that be information  
11 that should make it into a report someplace?  
12 A. What do you mean by "report someplace"? If a  
13 report should be taken on this incident?  
14 Q. Well, isn't there a report taken on this  
15 incident?  
16 A. Yes.  
17 Q. Okay. In that report did you read anywhere  
18 that Kristian Pettine said there was a weapon someplace?  
19 A. No, I did not.  
20 Q. Okay. If she had indicated -- because you  
21 were concerned about a weapon, if she had indicated  
22 there was a weapon someplace, would that piece of  
23 information be something that is important enough to be  
24 listed in the incident report?  
25 A. Yes. And I'm not -- there is Antonio Gallegos

1 going off threatening to tell Judge Naranjo what was  
2 going on. He did admit to there being firearms in the  
3 home. He did threaten myself and Officer Apodaca with a  
4 civil suit, or with a lawsuit is what he said.  
5 Q. Does that have any reference to the gun that  
6 was alleged to have been pointed at the complainant?  
7 A. Yes.  
8 Q. What gun?  
9 A. He admitted to there being guns in the home.  
10 We didn't know if those were the guns.  
11 Q. Did he admit to pointing a gun at the  
12 complainant?  
13 A. No, but there were guns. We didn't know which  
14 gun it was. He admitted to there being guns in the  
15 home. We didn't know where the gun was at, so we didn't  
16 know if the guns in the home were the actual guns  
17 pointed at the complainant.  
18 Q. Okay. Did you have any information that  
19 indicated to you that the gun in the house was the one  
20 that was pointed at the complainant?  
21 A. No.  
22 Q. Did you have any information that Antonio  
23 Gallegos had taken a gun out of the house and pointed it  
24 at the complainant?  
25 A. No.

1 Q. At the time that you -- did you ask any  
2 questions of either Antonio Gallegos --  
3 A. I did ask Antonio Gallegos questions, I just  
4 don't recall what the questions were.  
5 Q. Did you ask him if he pointed a gun at the  
6 complainant?  
7 A. I don't recall.  
8 Q. Did you ask him if he was involved -- did you  
9 ask him if he knew who allegedly pointed a gun at the  
10 complainant?  
11 A. I don't recall if I asked him that.  
12 Q. Did you ask the complainant any questions  
13 about who pointed the gun at him?  
14 A. I remember speaking to the complainant, but I  
15 don't know exactly what questions I asked him, either.  
16 Q. Do you recall if Officer Apodaca told you that  
17 the complainant identified who pointed the gun at him?  
18 A. He did.  
19 Q. And who was it?  
20 A. I want to -- I'm not sure I remember the name,  
21 but I think it was Estevan, if I'm correct.  
22 Q. And he didn't say Antonio Gallegos?  
23 A. No.  
24 Q. He didn't say Kristian Pettine?  
25 A. No.

1 Q. He didn't say anybody that was in the house?  
2 A. No.  
3 Q. Okay. At some point Mr. Gallegos -- well, how  
4 many questions do you recall hearing Officer Apodaca ask  
5 either Antonio Gallegos or Kristian Pettine about the  
6 individual or the gun that was allegedly used on the  
7 complainant or pointed at the complainant?  
8 MR. BASHAM: Objection as to form.  
9 Go ahead.  
10 A. I don't recall.  
11 BY MR. THOMPkins:  
12 Q. And do you know if you asked any questions of  
13 the complainant about the events that happened and led  
14 to him calling?  
15 A. I'm sure I did. I talked to the complainant  
16 but I don't remember what the questions are.  
17 Q. Okay. And how long were you observing Officer  
18 Apodaca and the individuals that were outside the home  
19 before anything else happened?  
20 A. I don't know.  
21 Q. How long -- you said you were there for an  
22 hour before Sergeant Martinez --  
23 A. Approximately an hour, I'm not sure on the  
24 time.  
25 Q. Okay, approximately an hour.



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1 Kristian Pettine and the complainant? And his name is  
2 Alfonzo Gurule.

3 MR. BASHAM: Objection as to form.

4 BY MR. THOMPSON:

5 Q. Let's take it one at a time so we remove the  
6 objection.

7 Is that what you observed, what you just  
8 stated, in your training and experience did you observe  
9 that about Antonio Gallegos?

10 A. Yes.

11 Q. Okay. Did you observe that also about  
12 Kristian Pettine?

13 A. Yes.

14 Q. And did you observe that about Alfonzo Gurule?

15 A. Who is the complainant; correct? Yes.

16 Q. And where -- did any of them have any problems  
17 being able to stand up and not sway?

18 A. I do believe that they were swaying. I do  
19 believe that Ms. Kristian Pettine was swaying somewhat  
20 when we talked to her. I do believe that Mr. Antonio  
21 Gallegos was swaying when we talked to him.

22 I don't recall if I spoke to the complainant  
23 while he was standing or just sitting.

24 Q. But you did observe the odor of alcohol,  
25 bloodshot eyes, slurred speech?

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1 A. Yes.

2 Q. When you yelled, or raised your voice to Mr.  
3 Gallegos to tell him he is not free to go into his  
4 house, what did you do after that?

5 A. Mr. Gallegos continued to walk. Then I got in  
6 front of Mr. Gallegos and I stopped him, I told him you  
7 can't go back in.

8 Q. Okay. So you ran and got in front of Mr.  
9 Gallegos before he could enter the house?

10 A. Yes.

11 Q. And told him he had to stop?

12 A. Yes.

13 Q. Okay. Did you at that point suspect Mr.  
14 Gallegos of having committed or being about to commit a  
15 crime?

16 A. I can't speculate if he was about to commit a  
17 crime, but at the time I could not say he had already  
18 committed a crime.

19 Q. You can't say he had. What crime did you  
20 think he might have committed?

21 A. Let me rephrase myself.

22 I can't say he had already committed a crime.

23 Q. Okay.

24 A. Okay? But I can't speculate and say that he  
25 was about to commit a crime.

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1 Q. Did you think he was about to commit a crime?

2 A. I don't know what he was thinking.

3 Q. Did you have any facts that would indicate  
4 that he was about to commit a crime?

5 A. Nothing that led me to believe that he was  
6 going to actually do something and commit a crime. But  
7 the nature of the call, and being that there was weapons  
8 in the home, which he himself stated, for the safety of  
9 the officers involved we did not want him to enter back  
10 into the home.

11 Q. And the call that was made was not about  
12 Antonio Gallegos, was it?

13 A. It was -- no, not necessarily.

14 Q. In terms of Mr. Gallegos, when you ran in  
15 front of him you restricted his movement?

16 A. By standing in front of him, yes.

17 Q. And when you ran in front of him and  
18 restricted his movement, he couldn't go into the house?

19 A. No.

20 Q. Okay. And did Officer Apodaca also, when you  
21 went to restrict Mr. Gallegos's movements, also follow  
22 you towards Mr. Gallegos?

23 A. Yes.

24 Q. And did he assist you and also restrict Mr.  
25 Gallegos's movement?

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1 A. After -- after Mr. Gallegos pushed me, and I  
2 attempted to use hand techniques to control Mr.  
3 Gallegos, yes, he did.

4 Q. What hand techniques did you use?

5 A. I was going to attempt to place Mr. Gallegos  
6 in an arm bar, which we were trained in the academy, and  
7 take him down to handcuff Mr. Gallegos. And Mr.  
8 Gallegos began to struggle with us, fight with us, and  
9 Officer Apodaca then dry stunned him.

10 Q. When you stopped or restricted Mr. Gallegos's  
11 movements, that's when you attempted to use the hand  
12 technique that you just described?

13 A. Say that again.

14 Q. You indicated that you went after Mr. Gallegos  
15 and Officer Apodaca also followed?

16 A. Uh-huh.

17 Q. That you were able to get in front of Mr.  
18 Gallegos?

19 A. Yes.

20 Q. And then to get Mr. Gallegos to comply you  
21 attempted to use a hand technique?

22 A. Only after Mr. Gallegos battered me and pushed  
23 me.

24 Q. Okay. How did he batter you?

25 A. Pushed me.